

(1992) 04 DEL CK 0036
In the Delhi High Court
Case No : Criminal Appeal No. 115 of 1979

N.D.M.C.

APPELLANT

Vs

Mangat Ram Duggal

RESPONDENT

Date of Decision : 24-04-1992

Acts Referred:

Citation : (1993) CriLJ 2022 : (1992) 2 RCR(Criminal) 474

Hon'ble Judges : P.K. Bahri, J; Mohd. Shamim, J

Bench : Division Bench

Advocate : B.J. Nayyar, for the Appellant; D.C. Mathur Sr. Advocate, Ms. Rebecca Mammen and Mr. Akshay Bipin, for the Respondent

Judgement

P.K. Bahri, J.—This appeal is directed against the judgment dated January 24, 1979 of a Metropolitan Magistrate by which he had acquitted the respondent of the charge u/s 7 read with S. 16 of the Prevention of Food Adulteration Act. Facts of the case in brief are that on July 24, 1974 at about 4.30 p.m. Shri R. N. Malhotra, Food Inspector, had lifted a sample of Maida from the canteen being run by the respondent at Indian Oil Bhawan, Janpath, New Delhi. Sample on being analysed by public analyst was found to be adulterated as it was found to be insect infested. The learned Magistrate appears to have acquitted the respondent on the short ground that the Food Inspector under the law was not entitled to lift the sample of Maida which was not kept for sale by itself but was being kept for being used in preparing another food article namely Samosas and he placed reliance on a judgment delivered by a single Judge of this Court in N.D.M.C., v. Subhash Malhotra 1978 (2) FAC 118. In Punnu Ram v. M.C.D. 1978 (2) FAC 76, another judgment of a single Judge of this Court appearing in the same volume a different view has been taken. We would have analysed the reasoning of the two judgments in this case in order to decide as to which view was more appropriate but it has become unnecessary to do so inasmuch as this point stands covered by a Full Bench Judgment of this Court in New Delhi Municipal Corporation Vs. Hardev Singh and Others, . The Supreme Court in

Master Lal Mohd. Sabir Vs. State of Jammu and Kashmir and Others, has already laid down the law on this point by holding that if a particular food article is kept for being used in preparing another food article the sample of the former could be lifted for the purpose of the Act. In that case sugar was kept for being used in preparing the tea and the tea was being sold and sugar as such was not kept for sale, yet it was held that sample of sugar could be lifted u/s 10(2) of the Act.

2. Support was being drawn from a judgment of the Supreme Court reported as Municipal Corporation of Delhi Vs. Laxmi Narain Tandon and Others, for the contrary view. This judgment of the Supreme Court was not applicable on the proposition which arose for decision before the Full Bench. The Full Bench had analysed both the judgments of the Supreme Court and had held that the judgment given in Food Inspector, Calicut Corporation (supra) is applicable. So, the learned Magistrate was not right legally in rendering the acquittal of the respondent on this ground.

3. As far as the merits of the case are concerned it is indeed not disputed that a sample was lifted from the respondent and on analysis it was found to be insect infested. However, the contention of the learned counsel for the defense is that the public analyst was not right in opening that the sample was adulterated due to presence of some insects. The report of the public analyst which is Ex. PF shows that the sample on being analysed on July 25, 1975 was found to contain one live and one dead weevil and eight living and six dead white insects. The presence of so many insects live and die in a quantity of 200 gms. on the face of it appears to hold that the sample was insect infested. In Vijay Kumar Vs. State of Punjab, , insect infestation to the extent of 9-7% has held to be sufficient to hold the sample as adulterated. In Municipal Corporation of Delhi Vs. Tek Chand Bhatia, it was held that once a sample is found to be insect infested, then it can be said to be adulterated without further proof that the article was unfit for human consumption. In Municipal Corporation of Delhi Vs. Ram Sarup, , the sample contained nine or ten white living insects, it was held that the sample was insect infested. So, in view of the above we hold that the sample of Maida in question was adulterated as it was insect infested.

4. Another contention raised before us by the learned counsel for the respondent is that the complaint in this case has been belatedly filed inasmuch as the sample was lifted on January 24, 1975 whereas the complaint was filed on Feb. 3, 1976 and thus, the right of the respondent to get the other sample analysed under S. 13(2) stands frustrated. There is no merit in his contention as well because at no point of time during the trial the respondent had prayed to the Magistrate for getting the other sample analysed. It was held by the Supreme Court in Ajit Prasad Ramkishan Singh Vs. The State of Maharashtra, , that in the absence of application by the accused u/s 13(2) of the Act for getting the sample analysed the accused could not complain that he was deprived of his right to have the sample analysed.

5. The learned counsel for the respondent then commended that in the present

case the complainant has failed to prove that any proper consent as contemplated by Section 20 of the Act has been obtained. P.W. 1 Shri S. P. Gupta had appeared in the witness box and deposed that the complaint has been signed by him as well as by Shri R. C. Sharma, his colleague, and both of them have been empowered by the N.D.M.C. for granting the consent and for filing the complaint and in this respect he proved on record copies of the two resolutions of the MCD which are Ex. PW 1/B and Ex. PW 1/C in resolutions had not been passed properly but now at the stage of arguments in this appeal the learned counsel for the respondent has drawn our attention to the copies of the resolutions which show that only directions had been given for approving the suggestion put before the Committees and resolutions as such had not been passed by the Committee. It appears that the agenda being laid before the Committee the Committee recorded its resolution in the following words :-

"Resolved that the suggestions be approved." We required the counsel for the appellant to bring the original minute books of the Committee in order to see how the Committee had been passing resolutions on different agendas. We have gone through the Minute Book. We find that for every meeting index is given detailing different items which are considered by the Committee and against every item the decision of the Committee is recorded almost in the same language as was used for passing the resolutions in question and the minutes for the day are signed by the President and the Secretary at the end of the proceedings. It may be that language used while approving the resolutions by the Committee is not happily worded, but the fact remains that for all intent and purposes the Committee had properly passed the resolutions in question. So, we hold that the learned Magistrate was not right in acquitting the respondent. We allow the appeal and set aside the order of the learned Magistrate and convict the respondent for offence punishable u/s 7 read with Section 16 of the Act.

6. So far as the sentence is concerned the respondent appears to have committed this offence in 1975 and the evidence on the record shows that he had left this business soon after the commission of the offence. The respondent was aged about 38 years at the time of the commission of the offence and his acquittal is being changed into conviction after a lapse of about 17 years. In such circumstances we feel that no useful purpose would be served by sentencing the respondent to any imprisonment. In similar cases in *State of Orissa Vs. K. Rajeshwar Rao*, , the Supreme Court has opined that imposition of fine is sufficient. So, in view of the above we impose a fine of Rs. 2000/- on the respondent. In default of payment of fine we direct that he should undergo rigorous imprisonment for a period of two months. The fine be deposited positively within one month.

7. Order accordingly.